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Camille Dupuy

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09/29/2010

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EXAMINER

BADR, HAMID R

ART UNIT

PAPER NUMBER

1781

NOTIFICATION DATE

DELIVERY MODE

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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action

Applicants' amendment after final rejection filed 8/27/2010 is acknowledged. This amendment is entered for appeal purposes.

Response to Arguments

In the pending Office action of 3/30/2010, claim 45 was rejected under 35 U.S.C. 112 second paragraph for being indefinite and confusing. The claim recites "such that the weight percentage of all dry matters of the acid fermented flour and the yeast extract, to the non-fermented flour, is between 0.8 to 2.5%".

This phrase can be interpreted at least in the following ways.

1. Claim 45 depends on claim 44. Claim 44 is directed to a bakery dough comprising non-fermented flour, the dry flavor enhancing agent and other ingredients. Firstly, claim 44 recites "dry flavor enhancing agent". There is no mention of "dry matters of the acid fermented flour and the yeast extract" in claim 44 on which claim 45 depends.

Even if the "dry matters of the acid fermented flour and the yeast extract" is assumed to be the "dry flavor enhancing agent" as recited in claim 44, the language of claim 44 remains indefinite and confusing because: since there is no mention of any 'ratio' in claim 45. Then the quantitative percentages, in claim 45, are interpreted as follows.

a) If a ratio is meant, the ratio, on a dry weight basis, of the dry flavor enhancing agent to the non-fermented flour is 0.8 to 2.5%. It is absolutely meaningless to express a 'ratio' in percentage. Furthermore, referring to the specification as originally filed, there is no ratio intended. Then it is fair to say the claim is indefinite and confusing.

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b) If it is meant that the quantity of the dry flavor enhancing agent, on a dry weight basis, is 0.8 to 2.5 wt % of the non-fermented flour, then it can be said that when there is 1 kg of non-fermented flour there should be between 8 to 25 grams of the dry flavor enhancing agent. The “weight percentage of all dry matters of the acid fermented flour and the yeast extract **TO** the non-fermented flour”, as presently recited in claim 45, does not convey, to a person of an ordinary skill in the art, that the dry flavor enhancing agent is present at 0.8 to 2.5 wt. percent of the n. Therefore, the claim is still indefinite and confusing.

Applicants' arguments that the ratio of dry matters are being claimed is neither accurate nor persuasive for the above reasons.

Therefore, the rejection of claim 45 under 35 U.S.C. 112 second paragraph is maintained.

Applicants' arguments regarding the rejection of claims 28-51 under 35 U.S.C. 103(a) are not persuasive either. The Examiner does not agree with those arguments because:

1. Applicants are arguing about an obviousness type rejection involving two references while judging the references individually.

R1 is clearly disclosing a fermented dough, using lactic acid bacteria and yeast, which can be dried and be used as such for flavor enhancing properties.

R2 is disclosing the incorporation of yeast extract into baked goods for various functionalities of yeast extract including flavor enhancing properties. dry yeast extract was known in the art, used as a flavor enhancing agent, at the time the invention was

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made, therefore, mixing the dry fermented dough of R1 and dry yeast extract of R2 for the same reason of enhancing flavor in a baked dough is obvious.

Applicants argument regarding the inclusion of egg white, by R2, is not persuasive because R2 clearly states that yeast extract can solely be added (col. 2, lines 12-14).

For the above reasons, claims 28-51 are not allowable.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAMID R. BADR whose telephone number is (571)270-3455. The examiner can normally be reached on M-F, 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hamid R Badr
Examiner
Art Unit 1781

/Keith D. Hendricks/
Supervisory Patent Examiner, Art Unit 1781